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# HOUSE BILL No. 1338

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-1-2-128; IC 8-1.3.

**Synopsis:** Sustainable energy. Establishes the sustainable energy institute to: (1) ensure that utility customers may participate in and benefit from sustainable energy programs; and (2) promote and implement sustainable energy programs. Requires energy utilities to contract with the institute to provide energy efficiency and demand side management services to customers. Allows an energy utility to recover costs associated with sustainable energy programs.

**Effective:** Upon passage.

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January 15, 2004, read first time and referred to Committee on Commerce and Economic Development.

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Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## HOUSE BILL No. 1338

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 8-1-2-128 IS ADDED TO THE INDIANA CODE  
2       AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE  
3       UPON PASSAGE]: **Sec. 128. (a) Notwithstanding any other law, an**  
4       **energy utility (as defined in IC 8-1-2.5-2) shall provide the energy**  
5       **utility's retail customers with the services of the sustainable energy**  
6       **institute established by IC 8-1.3-4.**

7       **(b) An energy utility shall do the following:**

8               **(1) Contract with the institute for the institute's services. The**  
9               **commission must approve a contract under this subdivision.**

10              **(2) Pay the energy utility's proportionate share of the expense**  
11              **of the services of the institute. The commission shall**  
12              **determine the energy utility's proportionate share based on**  
13              **the energy utility's share of retail energy use in Indiana.**

14       **(c) An energy utility shall pay the energy utility's pro rata share**  
15       **of the expense of the board. The commission shall determine the**  
16       **energy utility's pro rata share based on the energy utility's share**  
17       **of retail energy use in the state.**



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(d) The expense of the sustainable energy board in a fiscal year equals the sum of the budget of the board approved by the general assembly for the fiscal year plus one hundred thousand dollars (\$100,000) designated for a contingency fund. An expenditure from the contingency fund is subject to approval by the governor and the budget agency.

(e) An energy utility shall pay to the board twenty-five percent (25%) of the energy utility's annual share of the expenses of the board quarterly. However, an energy utility may pay one hundred percent (100%) of the energy utility's annual share of the expenses of the board at the beginning of the utility's fiscal year.

(f) The costs of the sustainable energy board and the services of the sustainable energy institute paid by an energy utility are allowable operating expenses for retail ratemaking purposes.

(g) The commission may allow an amount equal to ten percent (10%) of the annual savings resulting to an energy utility's retail customers from the services of the institute, as determined by the institute and approved by the commission, as an increment to the energy utility's return for retail ratemaking purposes.

SECTION 2. IC 8-1.3 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

### **ARTICLE 1.3. SUSTAINABLE ENERGY**

#### **Chapter 1. Purpose and Findings**

##### **Sec. 1. The general assembly makes the following findings:**

- (1) A diverse portfolio of clean and reliable energy resources is critical to the state's economy and environmental protection efforts.
- (2) There is significant potential in Indiana for the deployment of sustainable energy resources, including end use energy efficiency improvements and renewable energy and sustainable distributed technologies.
- (3) Sustainable energy resources may be deployed in a quick and cost effective manner to assist in meeting Indiana's rising demand for energy.
- (4) Efficiency measures and decentralized sustainable sources of power can enhance the reliability of Indiana's electric and natural gas delivery systems.
- (5) Sustainable energy resources can create jobs and bolster Indiana's manufacturing base.
- (6) Aggressive measures to deploy sustainable energy resources reduce volatility of fuel prices, including natural

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gas.

(7) Sustainable energy resources reduce overall energy costs.

(8) Deploying sustainable energy resources can ameliorate increasing environmental compliance costs.

(9) Despite the inherent public benefits of sustainable energy resources, institutional, behavioral and economic barriers to deploying these resources exist.

(10) It is in the public interest for the state to encourage deployment of sustainable energy resources.

Sec. 2. The purpose of this article is to establish a statewide sustainable energy program to:

(1) overcome institutional, behavioral, and economic barriers to deployment of sustainable energy resources;

(2) realize the economic, environmental, and system reliability benefits inherent in deploying sustainable energy resources; and

(3) provide Indiana citizens with a comprehensive and uniformly implemented set of sustainable energy initiatives.

#### Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Biomass" means any of the following:

(1) Closed loop biomass.

(2) Nonhazardous cellulosic waste material that:

(A) does not contain painted, treated, or pressurized wood or wood contaminated with plastics or metals;

(B) is segregated from other waste materials; and

(C) is derived from forest related resources, including:

(i) mill residues;

(ii) precommercial thinnings;

(iii) slash; and

(iv) brush, except old growth timber, black liquor, and materials from national forests unless the materials are in the form of paper mill waste.

(3) Waste pallets, crates, dunnage, and landscape or right-of-way trimmings, except municipal solid waste, post consumer wastepaper, construction debris, and demolition debris.

(4) Agricultural byproducts, including byproducts from:

(A) orchards;

(B) vineyards;

(C) grain;

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- (D) legumes;
- (E) sugar; or
- (F) other crops.

(5) Gases from municipal wastewater.

Sec. 3. "Board" refers to the sustainable energy board established by IC 8-1.3-3-1.

Sec. 4. "Central station facility" means:

- (1) a baseload;
- (2) an intermediate; or
- (3) a peaking;

electric power generating facility that is used to generate electricity primarily for the wholesale or retail electric markets.

Sec. 5. "Closed loop biomass" means organic material from a plant that is planted exclusively to be used to produce electricity.

Sec. 6. "Commission" refers to the Indiana utility regulatory commission established by IC 8-1-1-2.

Sec. 7. "Director" refers to the director of the institute appointed by the board under IC 8-1.3-3-6(2).

Sec. 8. (a) "Distributed energy resource" means:

- (1) end use energy efficiency improvements; or
- (2) electricity that primarily serves a customer's load and is produced from:

- (A) renewable energy resources;
- (B) microturbines;
- (C) internal combustion engines;
- (D) Stirling engines;
- (E) combined heat and power systems; or
- (F) district energy systems.

(b) The term does not include the following:

- (1) A central station facility.
- (2) Electric power generators that use:
  - (A) diesel fuel, except biodiesel;
  - (B) fuel oil;
  - (C) gasoline;
  - (D) nuclear fuel; or
  - (E) coal.

Sec. 9. "Energy utility" has the meaning set forth in IC 8-1-2.5-2.

Sec. 10. (a) "End use energy efficiency improvement" means the use or installation of a device, method, or project on the customer side of an energy utility metering device that reduces electrical or natural gas energy usage.

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(b) The term includes the following:

- (1) Home weatherization.
- (2) Appliance efficiency modifications or replacements.
- (3) Motor efficiency modifications or replacements.
- (4) Lighting efficiency modifications.
- (5) Heating or air conditioning modification or replacements.
- (6) Systems, including thermostats, lighting control, and operational controls, to turn off or vary the delivery of energy.
- (7) Building design with the purpose of achieving end use energy reductions.

Sec. 11. "Gas distribution company" means a corporation, a company, a partnership, a limited liability company, an individual, an association of individuals, or a lessee, trustee, or court approved receiver of an entity described in this section that distributes natural gas to retail customers.

Sec. 12. "Institute" means the sustainable energy institute established by IC 8-1.3-4-1.

Sec. 13. "Renewable energy" means energy derived from any of the following sources:

- (1) Solar photovoltaic and solar thermal energy.
- (2) Wind.
- (3) Fuel cells.
- (4) Geothermal energy conversion, except end use grid dependent technologies, including geothermal heat pumps.
- (5) Biomass.

Sec. 14. "Sustainable energy" means:

- (1) end use efficiency improvement;
- (2) renewable energy; or
- (3) distributed energy resource.

### Chapter 3. Sustainable Energy Board

Sec. 1. The sustainable energy board is established.

Sec. 2. (a) The board consists of the following members:

- (1) The lieutenant governor or the lieutenant governor's designee.
- (2) The chairman of the commission or the chairman's designee.
- (3) The utility consumer counselor or the utility consumer counselor's designee.
- (4) Two (2) members of the senate, who may not be of the same political party, appointed by the president pro tempore of the senate.

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(5) Two (2) members of the house of representatives, who may not be of the same political party, appointed by the speaker of the house of representatives.

(6) Thirteen (13) members appointed by the governor as follows:

(A) One (1) representative of public or private universities in Indiana.

(B) One (1) representative of statewide investor owned electric utility organizations.

(C) One (1) representative of statewide investor owned gas distribution utility organizations.

(D) One (1) representative of statewide municipal utility organizations.

(E) One (1) representative of statewide rural electric cooperative organizations.

(F) One (1) representative of statewide industrial organizations.

(G) One (1) representative of statewide commercial organizations.

(H) One (1) representative of statewide business organizations that represent energy service companies.

(I) One (1) representative of statewide consumer organizations that represent residential utility ratepayers.

(J) One (1) representative of statewide consumer organizations that represent low income residential utility ratepayers.

(K) One (1) representative of statewide environmental organizations.

(L) One (1) representative of statewide organizations that represent organized labor.

(M) One (1) representative of an academic or a nonprofit entity that is engaged in or that represents individuals with expertise in energy efficient building design.

(b) A member described in subsection (a)(1) through (a)(5) is a nonvoting member.

(c) The appointments made by the governor under subsection (a)(6) must be made in accordance with recommendations provided by the organizations described in subsection (a)(6).

Sec. 3. (a) Members of the board must be appointed not more than sixty (60) days after the board is established. Except as provided in subsection (b), each member appointed under section 2(a)(6) of this chapter serves a term of four (4) years beginning on

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the date of the member's appointment and until the member's successor is appointed.

(b) The terms of the members initially appointed by the governor under section 2(a)(6) of this chapter are as follows:

(1) Three (3) members serve a term of one (1) year beginning on the date of each member's appointment and until the member's successor is appointed.

(2) Three (3) members serve a term of two (2) years beginning on the date of each member's appointment and until the member's successor is appointed.

(3) Three (3) members serve a term of three (3) years beginning on the date of each member's appointment and until the member's successor is appointed.

(4) Four (4) members serve a term of four (4) years beginning on the date of each member's appointment and until the member's successor is appointed.

Thereafter, a member appointed by the governor serves a term of four (4) years and until the member's successor is appointed.

(c) The governor shall fill a vacancy on the board under section 2(a)(6) of this chapter not more than thirty (30) days after the vacancy occurs. A person appointed to fill a vacancy shall serve the remainder of the term of the board member the person replaces.

Sec. 4. (a) A member of the board who is not a state employee is not entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is, however, entitled to reimbursement for travel expenses as provided in IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(b) A member of the board who is a state employee but who is not a member of the general assembly is not entitled to compensation.

(c) A member of the board who is a member of the general assembly is entitled to receive the same per diem, mileage, and travel allowances paid to legislative members of interim study committees established by the legislative council. Per diem, mileage, and travel allowances paid under this subsection are paid from appropriations made to the legislative council or the legislative services agency.

Sec. 5. The governor shall appoint one (1) voting member of the board to serve as chairperson. The chairperson shall do the

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following:

- (1) Act as executive and operating officer of the board.
- (2) Manage, supervise, and control the daily affairs of the board.
- (3) Implement the policies of the board.
- (4) Perform all other duties and functions assigned by the board or by law.

Sec. 6. (a) The board shall meet at least quarterly.

(b) The meetings of the board shall be open to the public under IC 5-14-1.5.

(c) The board shall give notice of a board meeting in accordance with IC 5-14-1.5-5(b) at least fourteen (14) days before the meeting.

(d) The board shall give a person who attends a public meeting of the board an adequate opportunity to comment through the oral or written presentation of facts or argument.

(e) The board shall maintain and make available for public inspection written comments submitted to the board.

(f) A majority of the voting members of the board constitutes a quorum for doing business.

(g) Except as otherwise provided by law, the affirmative vote of a majority of the voting members present is necessary to conduct business.

Sec. 7. (a) The board shall do the following:

- (1) Assess the progress of the institute in implementing this article.
- (2) Appoint the director of the institute.
- (3) Provide a forum for discussing matters concerning implementation of this article.
- (4) Receive public complaints and inquiries concerning the implementation of this article.
- (5) Review the annual report submitted by the director.
- (6) Appoint a fiscal officer to receive, expend, and account for funds of the board, including money made available to the institute.
- (7) Apply for and accept gifts and grants on behalf of the institute.
- (8) Appoint a program liaison to staff the board.

(b) The board may direct the institute to study and formulate recommendations on particular issues concerning the implementation of this article.

Sec. 8. The board shall appoint a fiscal agent to receive and expend the funds of the board.

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**Chapter 4. Sustainable Energy Institute**

**Sec. 1. The sustainable energy institute is established.**

**Sec. 2. (a) The board shall appoint a university or nonprofit entity located in Indiana to house and operate the institute.**

**(b) The board shall:**

**(1) develop criteria to select a university or nonprofit entity to house and operate the institute; and**

**(2) adopt guidelines to govern the application and selection process, including the development of an application form.**

**(c) A university or nonprofit corporation shall submit with its application form a statement indicating the types of services, programs, and priorities related to sustainable energy that the institute will offer.**

**Sec. 3. (a) The institute shall do the following:**

**(1) Develop comprehensive and uniform sustainable energy programs to be implemented in all gas and electric utility service areas throughout Indiana.**

**(2) Promote the implementation of sustainable energy technologies and measures in Indiana.**

**(3) Ensure that all Indiana electric and gas ratepayers are given the opportunity to participate in and benefit from comprehensive sustainable energy programs and initiatives designed to overcome barriers to implementation.**

**(4) Ensure that resources used to implement programs developed by the board and the institute are distributed evenly throughout Indiana based on:**

**(A) customer classes;**

**(B) geographic regions; and**

**(C) gas and electric utility service areas.**

**(5) Coordinate programs established under this article with:**

**(A) low income weatherization programs;**

**(B) state or federal energy efficiency and renewable energy programs;**

**(C) other state agencies as appropriate; and**

**(D) other existing efficiency and renewable programs approved by the board.**

**(6) Carry out the purposes of this article.**

**(b) The institute shall track its progress in meeting obligations under subsection (a) and report to the board at least annually and upon request.**

**(c) The institute may enter into contracts to implement this article.**

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1       **Sec. 4. (a) The institute shall make the following programs and**  
 2 **services available to the public and to energy utilities:**

3       **(1) Initiatives to educate businesses, policymakers, and the**  
 4 **public about the benefits of sustainable energy resources.**

5       **(2) Programs to assist commercial and industrial energy**  
 6 **consumers in making sustainable energy purchases when**  
 7 **replacing or remodeling existing equipment and facilities.**

8       **(3) Programs to assist and train energy auditors.**

9       **(4) Programs to assist commercial and industrial energy**  
 10 **consumers in taking advantage of opportunities to gain**  
 11 **energy savings through incremental investments during**  
 12 **construction of new facilities.**

13       **(5) Programs to allow eligible commercial and industrial**  
 14 **customers, subject to criteria developed by the institute, to**  
 15 **implement sustainable energy measures on their own**  
 16 **premises and receive partial refunds of their contributions to**  
 17 **the fund.**

18       **(6) Programs that use a combination of cash incentives,**  
 19 **energy ratings, technical assistance, education, direct**  
 20 **installation of efficiency measures, energy efficient mortgages,**  
 21 **and strategic partnerships to introduce high efficiency**  
 22 **technologies and building practices into Indiana.**

23       **(7) Programs that:**

24           **(A) target low income families;**

25           **(B) build on Indiana's weatherization program for single**  
 26 **family homes; and**

27           **(C) provide technical assistance, education, and direct**  
 28 **installation of measures for multiple family units.**

29       **(8) Programs to transform the market for end use energy**  
 30 **efficiency improvements in terms of the mix of products and**  
 31 **in consumer choices through a combination of incentive**  
 32 **programs, marketing, and coordination with vendors and**  
 33 **market participants, including high efficiency residential**  
 34 **lighting products and home appliances.**

35       **(9) Programs to provide incentives to or engage in research**  
 36 **and activities that support new sustainable energy**  
 37 **technologies and applications.**

38       **(10) Programs and initiatives developed by other**  
 39 **organizations and parties that contribute to fulfilling the**  
 40 **institute's mission and requirements under this article.**

41       **(11) Programs to analyze and evaluate the need for changes**  
 42 **to building codes in terms of energy efficiencies and savings**

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benefits.

(12) Programs to analyze and evaluate barriers to deployment of distributed resources.

(13) Initiatives to promote the use of renewable resources by Indiana consumers and businesses.

(14) Initiatives to promote the development of renewable energy resources and businesses in Indiana.

(15) Initiatives to improve reliability of the electric transmission and distribution systems through the use of distributed energy resources.

(16) Other programs and initiatives designated by the board.

(b) The institute shall develop and submit to the board a five (5) year plan for meeting the goals and purposes of this article.

Sec. 5. A program or initiative developed by the institute supersedes and replaces an efficiency and demand side management program sponsored or initiated by an energy utility.

Sec. 6. (a) The state board of accounts shall annually audit the institute.

(b) The institute shall pay the full costs of the audit required under subsection (a).

Sec. 7. Debts incurred by the institute under this article do not represent or constitute a debt of the state within the meaning of the Constitution of the State of Indiana or Indiana law.

Sec. 8. (a) The institute shall submit a report before July 1 of each year to the governor, the board, and, in an electronic format under IC 5-14-6, the legislative council.

(b) A report submitted under subsection (a) must include the following:

(1) A statement of the institute's revenues by source and expenditures by purpose.

(2) Statistics relevant to the programs and operations of the institute.

(3) A description of the institute's goals, legal responsibilities, and accomplishments.

(4) Suggestions for legislation and the rationale for the suggestions.

(5) The progress in carrying out the plan required by section 4(b) of this chapter.

(6) Any comments or proposals that a board member gives to the director to include in the report.

(7) Reductions in demand or in growth of demand for electricity and natural gas.

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1 (8) Savings to customers with respect to demand reductions.

2 (9) Deployment of sustainable energy technologies.

3 (10) Any other matter the institute wishes to bring to the  
4 attention of the governor, the board, and the legislative  
5 council.

6 (c) The institute shall conduct a meeting to receive comments  
7 from interested parties regarding the report required under  
8 subsection (a) before the report is submitted to the governor, the  
9 board, and the legislative council.

10 Sec. 9. The institute shall submit an assessment of renewable  
11 energy markets and of the potential for energy efficiency  
12 improvement and renewable energy in Indiana. The assessment  
13 must include the following:

14 (1) Short term and long term energy costs.

15 (2) An analysis of the barriers to and potential of sustainable  
16 energy resources in Indiana and the region.

17 (3) An estimate of existing investments in sustainable energy  
18 resources in Indiana.

19 (4) An estimate of probable future market driven investments  
20 in sustainable energy resources in Indiana.

21 (5) A recommendation as to the optimal extent, size, mix, and  
22 general location of sustainable energy resources to achieve  
23 maximum efficiencies and benefits for the people of Indiana.

24 (6) Societal costs and benefits of sustainable energy, including  
25 the following:

26 (A) Impact on electric and natural gas system reliability.

27 (B) Impact on public health costs.

28 (C) Impact on environmental quality and cost savings to  
29 the citizens of Indiana.

30 (D) Impact on competitive electric and natural gas  
31 markets.

32 (E) Impact on economic growth, including employment  
33 opportunities.

34 (F) Other issues the corporation considers relevant.

35 SECTION 3. An emergency is declared for this act.

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